

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4724 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DY ENGINEER

Versus

RAMBANBHAI H PATEL

Appearance:

MR PJ PATEL for Petitioner

MR HK RATHOD for Respondent

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 14/02/97

ORAL JUDGEMENT

The petitioner panchayat has questioned the legality and validity of the award recorded by the Labour court at Nadiad on 16.10.1995 by filing this petition under

Articles 226 and 227 of the Constitution of India.

The respondent-workman was working as diesel-tractor conductor with the petitioner panchayat since 1957. He was working in another sub-division before that. He raised an industrial dispute challenging termination of his service which was referred to the Labour court. The Labour court vide its award passed an order of reinstatement with full back wages from the date of termination till the date of retirement. The respondent retired on attaining the date of superannuation on 3.1.1993. His service came to be terminated orally on 11.5.1981.

Learned advocate appearing for the petitioner firstly contended that service of the respondent was not terminated as such but he had abandoned. This contention is reiterated in this petition which was rightly rejected by the Labour court. Upon appreciation of facts and circumstances, the Labour court reached the conclusion that there was no abandonment of service but the employer terminated the service of the respondent-workman orally without observing provisions of the Industrial Disputes Act, 1947.

After having examined the facts and circumstances of the present case, and having heard the learned advocates appearing for the parties, this court is satisfied that the impugned award is justified. The present petition is covered by the ratio propounded by this court in the Division Bench decision rendered in *M.P. Ramanandi vs. Gujarat Warehousing Corporation*, 26(2) G.L.R. 1040.

The finding of fact recorded by the Labour court that termination of service of the respondent by the petitioner is illegal being in violation of the provisions of Section 25-F of the ID Act appears to be justified. The order of termination is void ab initio. Therefore, the Labour court has quashed and set it aside. In the circumstances, the order of reinstatement is required to be upheld.

Insofar as the question of payment of back wages is concerned, a contention is raised that the labour court has committed a serious illegality in awarding 100% back wages. It is true that the Labour court has awarded back wages from the date of oral termination of service viz 11.5.1981 till the date of retirement during the pendency of proceedings on 3.1.1993. Under Section 11-A of the ID Act, the Labour court has wide discretion to examine and appreciate the findings recorded by the domestic Tribunal and to substitute its finding. Besides, the Labour court

is empowered to impose a lesser punishment in lieu of discharge or dismissal as the circumstances may require considering the facts and circumstances of the case, the Labour court can also award back wages. Discretionary power under Section 11-A obviously has to be exercised judiciously and justly. The labour court has awarded 100% back wages. This finding of the Labour court requires to be reconsidered in light of the peculiar facts and circumstances emerging from the record of the present case. The respondent workman retired from service since January 1993. Full back wages are awarded for a period of more than 11 years by the labour court. Considering the period of 11 years and other relevant facts and circumstances, it would be just and reasonable to award 60% back wages. In other words, the award of back wages to the extent of 100% is required to be reduced to 40%. Therefore, this court finds substance in the second contention that 100% back wages for long spell of 11 years should not have been awarded.

In the result, while maintaining the order of reinstatement, the order of back wages is modified to the aforesaid extent. Accordingly, the respondent workman is entitled to 60% back wages instead of 100% awarded by the Labour court. The petitioner was directed to deposit an amount of Rs.2,000/- towards likely expenses of the respondent. Office is directed to pay the said amount to the respondent. The petitioner is also directed to reinstate the respondent-workman as per the award of the labour court within two weeks from today and shall pay back wages within a period of four weeks from today.

In the result, the petition is partly allowed. Rule is made absolute to the aforesaid extent without costs.
